

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

LETTERS PATENT APPEAL NO.160 OF 2006

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

CORAM : D.D.SINHA AND
 S.R.DONGAONKAR, JJ.

DATED : AUGUST 31, 2006

Heard Shri Jamal, learned Counsel
for the appellant, Shri Deshpande, learned
Counsel for the respondents.

The letters patent appeal is
directed against the order dated 10.8.2006
passed by the learned Single Judge
whereby petition filed by the appellant
against refusal to grant interim stay to the
order of transfer by the Industrial Court
came to be dismissed.

Shri Jamal, learned Counsel for
the appellant, submitted that in the instant
case, the Authority, who was not

competent to issue transfer order has issued the transfer order and, therefore, transfer order is per se illegal and without jurisdiction and is not sustainable in law. It was contended that in such situation, the Industrial Court ought to have stayed order of transfer during pendency of the complaint (ULP). However, at least learned Single Judge after considering this aspect should have shown indulgence, but the petition is dismissed by the learned Single Judge by the impugned order and, therefore, impugned order is not sustainable in law.

Shri Deshpande, learned Counsel for the respondents, supported the impugned order.

We have considered the contentions canvassed by the learned Counsel for the parties and perused the impugned order. Perusal of the impugned order shows that the appellant has not challenged competency of the Chief Civil Engineer to issue order of transfer. The learned Single Judge after taking into

consideration delegation of power in favour of Chief Civil Engineer came to the conclusion that no case is made out by the appellant for showing indulgence, however, thought it fit to issue direction to the Industrial Court to decide complaint (ULP) filed by the appellant within a period of six months. The learned Counsel for the appellant contended that petitioner in fact has challenged competency of the Chief Civil Engineer to issue order of transfer and, therefore, the observations made by the learned Single Judge do not reflect the factual position.

Be that as it may, in the present case, the Industrial Court prima facie refused to grant stay to the order of transfer on the ground that appellant was at Wardha for more than thirteen years and, therefore, was transferred to Chandrapur. The learned Single Judge after taking into consideration this aspect coupled with other aspects thought it fit to expedite hearing of the complaint (ULP) and dismissed the petition. In the circumstances, we are of the view that

since adjudication on merits in Complaint (ULP) is subjudice, it will not be proper on our part to observe anything on merits one way or the other and it will be appropriate for the Industrial Court to consider the issue on merits and, therefore, no case is made out by the appellant for showing indulgence. Since matter pertains to order of transfer, Industrial Court is directed to decide the complaint (ULP) of the petitioner within a period of four months from the date of communication of the order dated 10.8.2006 passed by the learned Single Judge in Writ Petition No.3698/2006. With these modification and directions, the letters patent appeal is disposed of.

JUDGE

JUDGE

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